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20 ARLETHA FLUD, THOMAS J. WOOD,

21 ERNEST C. HARVEY, II, individually,

22 and on behalf of all others similarly situated

23 **UNITED STATES DISTRICT COURT**

24 **NORTHERN DISTRICT OF CALIFORNIA**

25 **SAN JOSE DIVISION**

26 ROY D. TAYLOR, et al.,

27 Plaintiffs,

28 v.

29 FEDEX FREIGHT, INC., et al.,

30 Defendants.

Case No. 5:10-cv-02118 LHK

PROPOSED ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

31 The Court, having fully reviewed the Motion for Preliminary Approval of Class Action
32 Settlement, the Stipulation and Settlement of Class Action Claims (“Agreement”), and Exhibits in
33 support thereof, and having carefully reviewed the Agreement and the proposed Notice of

1 Pendency of Class Action and Proposed Settlement, and in recognition of the Court's duty to
 2 make a preliminary determination as to the reasonableness of any proposed Class Action
 3 settlement, and if preliminarily determined to be reasonable, to provide notice to Class Members
 4 in accordance with due process requirements, and to schedule a formal Final Settlement Hearing
 5 to determine the good faith, fairness, adequacy and reasonableness of any proposed settlement;

6 **HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:**

7 This action was originally filed in Santa Clara County Superior Court on June 18, 2007
 8 against FedEx Freight West, Inc. alleging wages owed and violations of California's meal and rest
 9 period requirements. The parties mediated the case in October 2008 before retired magistrate
 10 Edward Infante. The mediation failed. On December 28, 2008, FedEx Freight West, Inc., was
 11 acquired by FedEx Freight, Inc. (collectively, "FEDEX" herein) which continued to litigate in the
 12 name of FedEx Freight West, Inc. In June, 2009, Plaintiffs filed their motion for class
 13 certification. The Order granting certification was entered September 18, 2009, certifying the
 14 class of Line Drivers from June 18, 2003 to July 23, 2009.

15 In early 2010, the parties agreed to the filing of an amended complaint, naming FedEx
 16 Freight, Inc as the sole Defendant. The Complaint was amended, and the action was removed
 17 under the Class Action Fairness Act on May 18, 2010. On February 17, 2011, the Parties
 18 participated in full-day mediation with Lisa Klerman, Esq. serving as mediator. Although the
 19 initial mediation session with Ms. Klerman was unsuccessful, the parties continued telephonic
 20 settlement discussions through Ms. Klerman. The parties mediated with Ms. Klerman in a second
 21 full-day mediation on June 7, 2011. As a result of the mediation sessions and these arms length
 22 negotiations, the Parties reached an agreement set forth in the Stipulation.

23 The Parties propose the class be defined as it was in the original certification order as:
 24 "All persons who were employed by FedEx Freight West, Inc., (currently known as FedEx
 25 Freight, Inc.) as a 'line haul driver,' including pick up and delivery (P&D) drivers to the extent
 26 they performed line haul services and were paid for those services pursuant to the line haul pay
 27 plan, in California on or after June 18, 2003 through July 23, 2009." This class definition is
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1 consistent with the definition in the State Court case, and encompasses all Class Members who
2 were provided notice of the class certification in 2009.

3 The Court finds on a preliminary basis that the Agreement filed with, incorporated herein
4 by this reference and made a part of this Preliminary Approval Order, appears to be within the
5 range of reasonableness of a settlement which could ultimately be given final approval by this
6 Court. It further appears to the Court on a preliminary basis, that the settlement amount is fair
7 and reasonable to Class Members when balanced against the probable outcome of further
8 litigation relating to the propriety of class certification, the ultimate trial on liability and damages
9 issues, and the potential appeals of rulings.

10 It further appears that significant discovery, investigation, research, and litigation has been
11 conducted such that counsel for the parties at this time are able to reasonably evaluate their
12 respective positions. It further appears that settlement at this time will avoid substantial costs,
13 delay and risks that would be presented by the further prosecution of the litigation. It further
14 appears that the proposed Settlement has been reached as the result of intensive, serious and non-
15 collusive negotiations between the parties.

16 It further appears that Plaintiffs Roy D. Taylor, Thomas J. Wood, Arletha Flud and
17 Earnest C. Harvey, II are suitable class representatives, as were employed by Defendants as Line
18 Drivers during the Class Period, each have representative claims, and no conflict with the Class
19 exists;

20 ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR PRELIMINARY
21 APPROVAL IS HEREBY GRANTED, THE CLASS CERTIFICATION IS AFFIRMED AND
22 MICHAEL L. CARVER, LABOR LAW OFFICE, A.P.C. AND MARY-ALICE COLEMAN,
23 LAW OFFICES OF MARY-ALICE COLEMAN ARE CONFIRMED AS CLASS COUNSEL,
24 AND PLAINTIFFS ROY D. TAYLOR, THOMAS J. WOOD, ARLETHA FLUD AND
25 EARNEST C. HARVEY, II ARE DEEMED CLASS REPRESENTATIVES;

26 Consistent with the definitions provided in the Agreement, the term "Class Members"
27 includes "All persons who were employed by FedEx Freight West, Inc., (currently known as
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1 FedEx Freight, Inc.) as a 'line haul driver,' including pick up and delivery (P&D) drivers to the
 2 extent they performed line haul services and were paid for those services pursuant to the line haul
 3 pay plan, in California on or after June 18, 2003 through July 23, 2009." The "Class", "Classes"
 4 and "Class Members" excludes those persons who properly exclude themselves from the terms of
 5 the Settlement.

6 Further, the Court finds that the proposed Settlement Administrator, Simpluris, Inc., is an
 7 adequate claims administrator, and the proposed Notice of Pendency of Class Action and
 8 Proposed Settlement ("Class Notice"), which advises the Class Members of the Preliminary
 9 Approval of the Settlement, the timing and procedures for filing a claim, and the date of the Final
 10 Settlement Hearing, in the form attached to the Agreement as Exhibit 2 and incorporated herein
 11 by this reference and made a part of this Preliminary Approval Order, fairly and adequately
 12 advises Class Members of the terms of the proposed Settlement and the benefits available to Class
 13 Members and of the formal Final Settlement Hearing to be conducted on January 26, 2012 at 1:30
 14 p.m. and the right of Class Members to file documentation in support of or in opposition to the
 15 Settlement, and procedures for appearing at said hearing; the Court further finds that said Notice
 16 clearly comports with all constitutional requirements, including those of due process; the Court
 17 further finds that the proposed Class Notice and the Claim Form, are reasonable and adequate and
 18 will likely assist Class Members in the claims process;

19 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES
 20 THE PROPOSED CLAIMS ADMINISTRATION PROCESS, THE PROPOSED NOTICE OF
 21 CLASS ACTION AND PROPOSED SETTLEMENT, AND THE CLAIM FORM.

22 The mailing to the present or last known address of present and former employees and an
 23 address update search for Class Members, constitutes an effective method of notifying Class
 24 Members of their rights with respect to the Class Action and Settlement;

25 ACCORDINGLY, IT IS HEREBY ORDERED THAT THE PROCEDURES SET
 26 FORTH IN THE AGREEMENT AND THE FOLLOWING SCHEDULE BE ESTABLISHED
 27 AND FOLLOWED, UNLESS MODIFIED BY THE COURT:

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Event	Timing
Preliminary Approval of Settlement	Tuesday September 20, 2011
Defendant provides list of Class Members to the Claims Administrator.	Friday September 30, 2011
Claims Administrator mails Notice Packet (Notice & Claim Form) to Class Members.	Monday October 10, 2011
Deadline for Objection And/Or Notice of Intent To Appear At Fairness Hearing	Wednesday November 9, 2011
Deadline for Class Members to submit Claim Forms or Opt-Out	Monday November 28, 2011 ¹
Claims Administrator provides declaration of Mailing Class Notice and Claim Form.	Tuesday January 10, 2012
Plaintiffs file Motion for Final Approval.	Friday January 13, 2012
Final Approval Hearing.	Thursday January 26, 2012 at 1:30 p.m.
Defendants fund the settlement fund (QSF)	10 business days after Effective Date
Claims Administrator mails checks to Eligible Class Members, LWDA, Plaintiffs and Class Counsel.	20 business days of the Effective Date
Claims Administrator provides declaration of mailing checks to Eligible Class, and if uncashed, to a cy pres recipient.	150 days after Effective Date

IT IS FURTHER ORDERED that no person, except Class Counsel and Counsel for Defendant, shall be heard in opposition to the Court's determination of the good faith, fairness, reasonableness and adequacy of the proposed Settlement, the requested attorneys' fees and litigation expenses, the proposed Class Representative Enhancements and/or any Order of Dismissal with Prejudice and Final Judgment regarding such Settlement, unless such person has

¹ Although the parties originally agreed to a 45 day claims period, the 45th day fell on Thursday November 24, 2011, which is Thanksgiving Day. As such, the claims period has been extended an additional 4 days so that the last day for Claimants to submit a claim is Monday November 28, 2011.

1 complied with the conditions set forth in the Notice of Pendency of Class Action and Proposed
2 Settlement, which conditions are incorporated herein;

3 IT IS FURTHER ORDERED all briefs supporting or opposing the Settlement shall be
4 served and filed at least ten (10) Court days before the Final Approval Hearing;

5 IT IS FURTHER ORDERED that if for any reason the Court does not execute and file an
6 Order of Dismissal with Prejudice and Final Judgment, or if the "Effective Date" of Settlement, as
7 defined in the Agreement, does not occur for any reason whatsoever, the proposed Agreement,
8 and all evidence and proceedings had in connection therewith, shall be without prejudice to the
9 status quo and the rights of the parties to the litigation as more specifically set forth in the
10 Agreement;

11 IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before the
12 undersigned at 1:30 p.m. on January 26, 2012, at the United States District Court, Northern
13 District of California, San Jose Division, Courtroom 8 to consider the fairness, adequacy and
14 reasonableness of the proposed Settlement, preliminarily approved by this Preliminary Approval
15 Order, and to consider the application of Class Counsel, for an award of reasonable attorneys'
16 fees, costs and expenses incurred, and the request for Class Representative Service Fees for
17 Plaintiffs Roy D. Taylor, Thomas J. Wood, Arletha Flud and Earnest C. Harvey, II.

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19 IT IS SO ORDERED.

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21 Dated: September 20, 2011

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Honorable Lucy H. Koh
United States District Court Judge